

**Town of Underhill
Development Review Board Minutes
October 31, 2016**

Board Members Present:

Charles Van Winkle, Chairperson
Mark Green
Mark Hamelin
Penny Miller
Karen McKnight
Matt Chapek

Staff/Municipal Representatives Present:

Andrew Strniste, Planning Director

Others Present:

Marlene Yanus (103 Irish Settlement Road)
Paul Yanus (103 Irish Settlement Road)
Lincoln Weed (120 Irish Settlement Road)
Debbie Hudson (114 Irish Settlement Road)
Ashley Wishinski (111 Irish Settlement Road)

6:30 PM – 10/31/2016 DRB Public Hearing

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- DRB Members convened at Town Hall at 6:30 PM. Chair Van Winkle called the meeting to order.
 - Chair Van Winkle asked for public comment. No public comments were provided.

**6:35 PM – Wishinski – Conditional Use Review IS111
(111 Irish Settlement Road)**

Docket# DRB 16-10

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- [6:35] Chair Van Winkle began the hearing by explaining the procedure for a conditional use permit review. The applicant, Ashley Wishinski, was before the Board for a conditional use permit to convert a single-family home with an attached accessory dwelling to a multi-family dwelling located at 111 Irish Settlement Road. The applicant and a handful of abutting neighbors were in attendance.
 - [6:38] Chair Van Winkle swore in the hearing participants. No conflicts of interest were present, and therefore, no recusals occurred.
 - [6:39] Staff Member Strniste entered Exhibit Y – Mike Hudson Statement and Exhibit Z – MMU Service Memorandum into the record.
 - [6:40] Ms. Wishinski provided an overview on why she was in front of the Board. She informed the board that she purchased the house in June to use it as a three-dwelling unit house. She then proceeded to state that she was aware of all of the safety concerns and updates that were required.
 - [6:41] Chair Van Winkle asked the applicant about the current infrastructure. Ms. Wishinski informed the Board that the house contained four bedrooms (two in the main house and one in each apartment) and a three-car garage. She continued to state that the driveway no longer contains a circle, as it had been filled in, and that additional parking can be provided if needed. Currently, two cars are being parked in the garage while two other are being parked outside.
 - [6:45] A discussion ensued about the layout of the house. Ms. Wishinski informed the Board that the main house contains two floors, while the two accessory apartments are one floor only, which are attached to the rear of the house. Board Member Miller inquired about the specifics of the parking, which Ms. Wishinski responded that her and her significant other have been using the garage; however, the other three required parking spaces can be located elsewhere.

- [6:47] Chair Van Winkle inquired about the purchasing process. Ms. Wishinski stated she and her significant other purchased the house thinking it was a three-dwelling unit structure; however, their attorney stated that the structure was only permitted as a single-family home.
- [6:48] Mr. Yanus informed the Board that he had signed off on allowing two-mother-in-law apartments. The Board learned that the State asked him to sign off on a septic system that would have impacted his well.
- [6:49] Board Member Chapek inquired about the multiple kitchens, and whether one was removed, and then replaced. Board Member Hamelin followed-up by asking if the water/wastewater systems could handle the multiple kitchens and bathrooms. Chair Van Winkle stated that the permit was issued based on the number of bedrooms per the old rules.
- [6:51] A discussion ensued about the correspondence received from ANR regarding the conversion process from a single-family dwelling with an accessory apartment to a multi-family house. From ANR's perspective, since the applicant never converted the house from a multi-family house to a single-family house, no further permitting was required from them.
- [6:53] Ms. Wishinski informed the Board that she was not planning on selling the house, as she and her significant other were planning on fixing up the property. She informed the Board that she was committed to the neighborhood, and looking to increase the value of the community.
- [6:55] Staff Member Strniste provided a summary of his staff report. He informed the Board that the current Regulations contains issues between distinguishing the differences between multi-family dwellings and accessory apartments. He stated that the two types of dwelling units function the same, and for all intent and purposes, they are the same. The major differences between the two are 1) the residency requirement for accessory apartments, and 2) the size requirements for accessory apartments. He also informed the Board about the history of the mother-in-law apartment in Underhill. He stated that the mother-in-law apartment was permitted during a time where multi-family uses were not allowed in the Town, as this was a way around that provision. Afterward, Staff Member Strniste stated that the multi-family structure at issue has already proven to have minimal impact, as there have been no complaints documented.
- [7:03] Mr. Yanus was invited to speak and share his concerns with the Board. He stated that his property borders the involved property on the Southwest, and that he was concerned about all of the units being rented out if the conditional use permit was granted. He also expressed his concern about the number of bedrooms in the house, and how at one point he believed there to be more. Mr. Yanus continued to expressed his concern about the main house being divided into additional dwelling units. A discussion ensued about the differences between granting a conditional use and rezoning. Afterward, Mr. Yanus explained his concern about his septic, since the wastewater system could potentially affect his property.
- [7:08] Chair Van Winkle informed Mr. Yanus that the Board has been recently issuing decisions that run with the applicant rather than with the land. Mr. Yanus informed Staff Member Strniste that the reason why there were no complaints was because no one has lived in the building the previous five years, and prior to that, the mother-in-law apartments were not occupied by active tenants. A discussion ensued about the adequacy of the septic and the number of bedrooms. Mr. Yanus asked the Board if the main house could be developed to contain additional apartments if Ms. Wishinski and her significant other were to leave, in which the Board responded yes; however, they would have to come in front of the DRB again, as well as get updated water/wastewater permits. Mr. Yanus then asked how he would know if there was a violation. Board Member Miller responded that abutting neighbors would likely not know of a violation until they were impacted, at which point they could inform the Town. Mr. Yanus

informed the Board that there were two tenants currently occupying the two accessory apartments.

- [7:18] Board Member McKnight inquired about the well being close to the septic. Mr. Yanus informed the Board that he had a shallow well prior to the structure at 111 Irish Settlement Road being built. In order for the building at 111 Irish Settlement Road to have a septic field, the Yanus' had to sign off on the wastewater permit, but as part of the agreement, they would have a deeper well built. Mr. Yanus informed the Board that his dwelling is a single-family dwelling with no accessory apartment. Board Member Green clarified Mr. Yanus' concern about owner occupancy, as Mr. Yanus agreed that a concern of his was that the owner of land would not be occupying the house.
- [7:21] Mr. Weed was invited to speak to the Board next. He informed the Board that he was located uphill on the other side of Irish Settlement, and that he echoed a lot of Mr. Yanus' concerns. He informed the Board that he would like to see an owner occupancy condition attached to the permit if approved. Mr. Weed informed the Board that his residence was a single-family home with a drilled well and onsite septic.
- [7:24] Ms. Debbie Hudson was invited to speak to the Board after Mr. Weed. She informed the Board that she thought Ms. Wishinski and her significant other were lovely neighbors; however, she was concerned that if they were to leave, the structure would be permitted as, and be rented out as, three separate dwelling units. She informed the Board that she lived directly across the street, and that the light and noise from the property at issue impacts her property. She continued to state that she purchased her property in 2010. She then stated that if an owner lives on the property, circumstances are more stable. Ms. Hudson continued to state that the house that she moved into was her retirement home. Afterward, she inquired about the number of multi-family residences in Underhill, as well as if a conditional use permit is issued, if that meant it released the owner occupancy requirement. The Board answered Ms. Hudson by stating that they were unsure of how many multi-family homes were in Town, and that if the conditional use permit was issued, then the owner occupancy requirement would cease to exist. She then responded to a comment made by Mr. Yanus during his testimony, by asking the board how a home can be purchased without knowing that it must be purchased a certain way. Chair Van Winkle informed Ms. Hudson that permitting issues would be discovered during an attorney's title search.
- [7:31] Staff Member Strniste entered Exhibit AA – Listers' Card for 111 Irish Settlement Road, into the record. Ms. Hudson stated that having to wait for the septic to impact Mr. Yanus was not fair to the community. She then stated her skepticism regarding a house of this proportion only having two bedrooms. Chair Van Winkle informed Ms. Hudson that the Board has the ability to require written plans such as maintenance plans and snow plans for multi-family dwellings since they are a conditional use. Ms. Hudson continued to state that she did not like the uneasiness of not know what type of impact (such as cars or what potential new neighbors will be like) a multi-family residence would have on her property, and that she was concerned with the Board using words such as would, could and will. Board Member Miller informed Ms. Hudson that there would be a requirement of five parking spaces at the residence if approved. Ms. Hudson followed by stating that she would like to see a limit on bedrooms, and that she is in no way in favor of a multi-family dwelling. She believed that a multi-family dwelling did not conform to the character of the community, and that she could not see it working out. Lastly, Ms. Hudson informed the Board that she lives in a single family residence with no accessory apartment.
- [7:45] Ms. Marlene Yanus was the last member of the public invited to speak in front of the Board. She stated that the previous owners used the accessory apartments to house their

mothers, and that the apartments were used to house multiple generations. She informed the Board that there has been no traffic, and that the dwelling has been very quiet since there no one has resided at the house for the past few years. She stated that she heard that there were now two tenants residing at the house, one in each apartment, in addition to Ms. Wishinski and her family. She stated her concern of there possibly being four bedrooms, and that there could potentially be two people per bedroom, thereby causing an increase in the number of cars coming and going from the property – a noticeable increase in traffic. Ms. Yanus then informed the Board that now that the leaves are gone, the traffic is very noticeable. While she was not angry about Ms. Wishinski wanting an extra stream of revenue, she was concerned about not following the process. Ms. Yanus then stated that the approval of the conditional use would change the character of the property, and that the lights were a distraction. Chair Van Winkle informed Ms. Yanus about the possible ways of mitigating the lights.

- [7:53] Ms. Wishinski was invited to speak in front of the Board again. She informed the Board that both accessory apartments are currently being rented out. She confirmed that the dwelling was approximately 4,900 sq. ft., and that there were five bathrooms. She then informed the neighbors that there was an extra car in the driveway due to an accident involving a deer. Ms. Wishinski then informed the Board that she did not want to impact the community in a negative way, and that she never felt so welcomed.
- [7:56] A discussion ensued about the number of bedrooms allowed in an accessory apartment. Penny informed the Board that Vermont State statute restricts accessory apartments to one bedroom; however, the Town's Regulations do not provide a restriction on the number of bedrooms allowed in an accessory apartment.
- [7:58] Ms. Hudson asked Ms. Wishinski how many dogs were currently in the building. Staff Member Strniste confirmed that there were no regulations pertaining to restricting dogs.
- [7:59] Board Member McKnight inquired about the driveway meeting the requirements, in which a discussion ensued.
- [8:04] Board Member Green inquired about the density requirements, and what a multi-family dwelling located on this lot meant regarding future subdivision. Staff Member Strniste informed the Board that even if the more restrictive interpretation of the Regulations applied, the Lot would still meet density requirements. He also informed the Board that they may be able to write in restrictions into the decision. Chair Van Winkle then responded by stating that if anyone disagreed, then he or she could appeal, or a future applicant may be able to go in front of the Board at a later date and try to convince the Board otherwise, and if successful, a permit may be amended.
- [8:08] Chair Van Winkle asked if the Board had enough information to make a decision about the application. The entirety of the Board answered yes. The Board chose not to conduct a site visit. Chair Van Winkle asked for a motion to close the evidentiary part of the hearing. Board Member Chapek made the motion to close the evidentiary part of the hearing, which was seconded by Board Member Miller. Motion passed unanimously.
- [8:12] Chair Van Winkle asked for a motion to move into closed deliberative session. Board Member Miller made the motion to move into closed deliberative session, which was seconded by Board Member Chapek. Motion passed unanimously.

8:18 PM – Other Business

- [8:18] Chair Van Winkle asked for a motion to approve the minutes of September 19th, 2016. Board Member McKnight made the motion to approve the minutes of September 19th, 2016, which was seconded by Board Member Miller. Motion passed unanimously.
- [8:19] Chair Van Winkle asked for a motion to approve the minutes of October 3rd, 2016. Board Member Chapek made the motion to approve the minutes of October 3rd, 2016, which was seconded by Board Member Hamelin. Motion passed unanimously.
- [8:20] Chair Van Winkle asked for a motion to approve the minutes of October 12th, 2016. Board Member McKnight made the motion to approve the minutes of October 12th, 2016, which was seconded by Board Member Chapek. Motion passed unanimously.
- [8:21] Chair Van Winkle asked for a motion to approve the minutes of October 17th, 2016. Board Member Hamelin made the motion to approve the minutes of October 17th, 2016, which was seconded by Board Member Green. Motion passed unanimously.
- [8:22] Chair Van Winkle asked for a motion to move into executive session. Board Member McKnight made the motion to move into executive session, which was seconded by Board Member Miller. Motion passed unanimously.

Submitted by:
Andrew Strniste, Planning Director

These minutes of the 10/31/2016 meeting of the DRB were accepted
this _____ day of _____, 2016.

Charles Van Winkle, Chairperson

These Draft minutes are subject to correction by the Underhill Development Review Board. Changes, if any, will be recorded in the Final meeting minutes of the meeting of the DRB.